Before the
Federal Communications Commission
Washington, DC 20554

In re	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review-Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

To: The Commission

REPLY COMMENTS AND COMMENTS OF
ARCH WIRELESS OPERATING COMPANY, INC.

Arch Wireless Operating Company, Inc. ("Arch")[1] hereby submits reply comments on the Second Further Notice of Proposed Rulemaking ("*SFNPRM*") in the above-captioned

[1] Arch is the leading provider of one and two-way wireless messaging and information services in the U.S., operating local, regional and nationwide messaging networks across the country, including in the 100 largest markets and in the U.S. Virgin Islands and Puerto Rico.

proceedings, and initial comments on the Wireline Competition Bureau's Staff Study of Alternative Contribution Methodologies ("Staff Study").[2]

There is unanimity among the paging carriers (hereinafter referred to as messaging carriers) commenting in this proceeding, as well as substantial agreement among the other commenters, that a revenue-based assessment mechanism, coupled with a safe harbor, continues to be the most equitable, non-discriminatory, sustainable and least administratively burdensome federal USF assessment mechanism.[3] The messaging carriers correctly note that a revenue-based assessment mechanism, especially one based on projected revenues, is competitively neutral because it does not place a disproportionate, inequitable and unreasonable contribution obligation on carriers that are experiencing the dual dilemmas of sharply declining interstate

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[2] *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002)("*R&O*" or "*FNPRM*"); "Wireless Competition Bureau's Staff Study Regarding Alternative Contribution Methodologies," Public Notice, 18 FCC Rcd 3006 (rel. Feb. 25, 2003)("Staff Study").

[3] *See* Comments of Arch at 4-5; Verizon Wireless at 5-7; Allied National Paging Association at 5-7; American Association of Paging Carriers at 3-5; Metrocall Holdings, Inc. at 5-8; WebLink Wireless, Inc. at 8-10; Consumers Union at 3; AT&T Wireless Services, Inc. at 4 (supporting the wireless safe harbor); Cellular Telecommunications & Internet Association at 3 (recommending no further modifications to the assessment system at this time); Nextel Communications, Inc. at 21-24 (arguing that the interim measures should be given a reasonable amount of time to work); TracFone Wireless, Inc. at 7-17 (arguing that the recent changes to the contribution methodology should be allowed to work and additional changes to the revenue-based methodology should be considered before adopting a connection-based mechanism); Fred Williams and Associates, Inc. at 4-7 (supporting a revenue-based mechanism); National Association of State Utility Consumer Advocates at 3-4 (supporting retention and reform of the revenue-based mechanism).

telecommunications revenues and a shrinking customer base.[4] Further, for both regulators and carriers, such a system is administratively flexible and comparatively less burdensome to administer than the per-unit/per-connection/per-telephone number approaches proposed in the *SFNPRM*.[5] For these reasons, Arch urges the Commission to retain a gross revenue USF assessment mechanism.

If the Commission nonetheless continues to consider the three connections-based assessment proposals detailed in the *SFNPRM*[6] (and discussed in the Staff Study), the Commission must implement an appropriate substitute proxy to account for differences in revenue in order to proportionately and equitably allocate federal USF contribution obligations, as required by Section 254(d) of the Act.[7] As Arch and Metrocall have already suggested, a capacity-based offset to a per-connection assessment regime, which reflects the radically different amounts of capacity consumed by various industry segments on the public switched telephone network ("PSTN"), can serve as such a proxy. Arch continues to believe, and Metrocall concurs, that an appropriate capacity-offset is the most effective way for the

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[4] Comments of Arch at 4; Allied National Paging Association at 14; Metrocall at 5-8; Weblink at 6; Comments of AAPC at 5 (April 23, 2002).

[5] *See R&O* ¶ 23; Arch Comments at 5, n.12.

[6] Arch recognizes the Commission's desire to "fix" what is perceived as a broken system; however, Arch agrees with the American Association of Paging Carriers ("AAPC") that drastic measures, such as completely abandoning a gross revenue approach, are not necessary in every instance. Specifically, as the AAPC astutely observes, the Commission is not required to "impose <u>either</u> a revenue-based contribution methodology <u>or</u> a connection-based methodology across the board on all industry segments, regardless of whether there is any benefit in doing so." Comments of AAPC at 3-4. Rather, the Commission uses different contribution methods for assessing annual regulatory fees, including such variations as percentage of revenues, per-unit charges and per-call sign charges; and there is no inherent reason why similar variations cannot be used for USF contributions as appropriate." *Id.* at 4.

[7] 47 U.S.C. § 254(d).

Commission to satisfy its Section 254(d) obligations under a per-unit/per-connection/per-telephone number methodology.[8]

As previously pointed out in this proceeding, one-way messaging devices utilize no more than one-twentieth the capacity, and two-way messaging devices no more than one-tenth the capacity, of two-way voice connections.[9] In addition, messaging networks, by design, utilize less capacity over time on the PSTN than voice connections.[10] Whereas messaging networks transmit communications in short bursts, voice connections maintain continuously open circuits. The transmission of a 90-character message generally takes only 300 milliseconds of airtime on a one-way messaging network and only 152 milliseconds of airtime on a two-way messaging network.[11] Moreover, the party initiating a message to a one-way device remains connected to the wireline network for approximately 15 seconds while inputting a numeric page. This connection time contrasts sharply with the average connection time of approximately 2 minutes for a CMRS voice call, and the even longer average for a wireline voice call.[12] The most effective way for the Commission to give appropriate effect to this operational disparity is to assess one-way messaging a per-connection rate of <u>no more than one-twentieth the rate</u>

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[8] Establishing a capacity offset should not be seen as controversial because such an approach is already an integral part of the three proposals analyzed in the Staff Study. Moreover, a capacity-weighted offset is consistent with the Commission's own thinking. *SFNPRM* ¶ 75 (under the first connections-based proposal, multi-line business users assessed on the basis of capacity); *Id.* ¶ 87 (under the second proposal, assessments do not distinguish between business and residential, but are based purely on capacity); *Id.* ¶ 96 (under the third proposal, carriers without assigned numbers assessed on the basis of the capacity of end-user connections).

[9] *See* Letter from L. Charles Keller, counsel to Arch, to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 19, 2002) ("Arch Ex Parte").

[10] *Id.*

[11] *Id.*

[12] *Id.*

applicable to a two-way voice connection, and two-way messaging at a rate no more than one-tenth the rate applicable to a two-way voice connection.[13]

The Staff Study ignores entirely the significant operational differences between messaging and two-way voice networks and the different rates at which each consume resources on the PSTN. Consequently, USF contribution obligations, as set forth in the Study, fall disproportionately on the messaging industry at a time when both the industry's subscriber base and revenues are declining. Under the mandatory minimum assessment proposal (the first proposal), the Staff Study indicates that one-way messaging will be assessed at a per unit rate one-tenth the rate assessed two-way voice units (even though two-way voice units consume at least 20 times more capacity), and that two-way messaging will be assessed at a per unit rate of one-fifth the voice connection rate (even though two-way voice units utilize at least 10 times more capacity). The disproportionate impact of this approach is patently at odds with Section 254(d)'s equitable and reasonable mandate.

The disparate impact of non-revenue based assessment mechanisms on messaging is even more pronounced under the split access/transport-based assessment proposal (the second proposal), and the telephone number-based assessment proposal (the third proposal). Specifically, the Staff Study groups messaging in the very same capacity tier as two-way voice connections (*i.e.*, connections of up to 725 Kbps). Thus, two-way messaging and two-way voice

[13] Whereas voice networks typically provide capacity of 64 kilobits per second ("kbps"), one-way paging networks typically provide a transmission rate of 3.2 kbps or less (one-twentieth of the capacity of a voice grade connection), and two-way messaging networks typically provide a transmission rate of 6.4 kbps (one-tenth of a voice-grade connection). Additional reductions would be warranted if capacity were defined to reflect actual as opposed to potential use (*i.e.*, capacity multiplied by the average time duration of a connection). *See* Arch Comments at 7; Weblink at 6.

providers pay exactly the same rate for each access connection and assigned telephone number.[14] It is unreasonable and inequitable and therefore clearly violative of Section 254(d) to assess messaging carriers at a rate which is 1,000% higher on a per-unit/per-capacity basis for each access connection. Arch submits further that it is inequitable and unreasonable under any assessment mechanism to require the messaging industry to shoulder a disproportionate portion of increasing USF obligations for the foreseeable future (as each of proposed assessment mechanisms contemplates) at a time when the industry's relative use of the PSTN is declining, and its units in service and interstate revenues are shrinking,[15] while other industry segments' use of the PSTN as well as their units in service and interstate revenues are increasing.[16]

The real impact of the three connections-based proposals, however, remains unclear because of numerous faulty assumptions contained in the Staff Study. First, the Study assumes that "paging systems will continue to report 16 percent of paging revenues as interstate, reflecting the fact that some paging systems report 100 percent of revenues as interstate."[17] Sixteen percent has never been touted as being the percentage of messaging carriers' interstate revenues. To the contrary, the Commission just determined, when it retained the 12 percent messaging safe harbor, that "the record developed at this time does not support adjustment of the

[14] Although one-way messaging is afforded some relief by being assessed at one-half the CMRS voice access connection rate, as indicated above, it uses no more than one-twentieth the capacity.

[15] For example, Arch's total number of units in service peaked at approximately 11.9 million in 2000 following its merger with Paging Network, Inc. Since then, its total unit count has dropped nearly 50 percent. In addition, Arch's total revenues declined almost 30 percent in calendar year 2002. *See* 10-K filing of Arch Wireless, Inc. for year ending December 31, 2002 ("Arch 10-K").

[16] Consistent with these premises, for example, the Commission in the *R&O* increased the safe harbor for broadband CMRS carriers to reflect growing interstate telecommunications revenues, but did not increase the safe harbor for messaging. *R&O* at ¶¶ 21-23.

[17] Staff Study at 15.

[12%] safe harbor[] for . . . paging providers."[18] Further, Arch has seen no evidence of any paging company reporting 100% interstate revenues.

The Staff Study also relies on projections regarding growth in the messaging industry that fly in the face of historic, well-documented trends. For example, the Staff Study calculates the total number of messaging units declining approximately 4.36 percent annually through 2007. This projection is inconsistent with the actual, annual decline of 9.54 percent reported in the Commission's Regulatory Fee proceedings in the 1997-2002 time period, and with the 13.85 percent decline reported in the Commission's CMRS Competition Reports in the 1997-2001 time period.[19] This discrepancy is partly explained by the Staff Study's projected 30.8 percent average annual growth rate for two-way messaging units through 2007; however, this growth projection is wildly inconsistent with the industry's and Arch's recent experiences in the two-way business,[20] particularly given the advent of SMS services offered by numerous broadband CMRS carriers.[21]

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[18] *R&O* at ¶ 23. In fact, AAPC suggested that the 12% figure be reduced to 1% for non-nationwide messaging carriers. *See* Letter from Kenneth Hardman, Counsel for American Association of Paging Carriers, to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 15, 2002).

[19] These figures were calculated based on the number of messaging units reported in the Commission's annual regulatory fee orders, and the annual CMRS competition reports.

[20] Arch's number of two-way units in service increased approximately 5.4% in 2002. *See* Arch 10-K.

[21] "SMS was introduced in the United States in May 2000 when VoiceStream began to offer the service. As of year-end 2001, the six nationwide mobile telephone carriers, as well as handheld providers and some smaller mobile telephone carriers, were offering SMS." *Implementation of Section 6000(2) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Seventh Report, 17 FCC Rcd 12985, 13051 (2002).

CONCLUSION

For the reasons set forth herein, Arch respectfully submits that the Commission should retain a revenue-based USF assessment methodology. If a non-revenue based assessment mechanism is adopted, Arch believes that one-way messaging should be assessed a per-connection rate of no more than one-twentieth the rate applicable to voice connections, and that two-way messaging should be assessed at a rate no more than one-tenth the rate applicable to voice connections.

Respectfully submitted,

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April 18, 2003